

# United States Senate

WASHINGTON, D.C. 20510

March 3, 2010

**0340**

The Honorable Julius Genachowski  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Dear Chairman Genachowski:

As you know, millions of Cablevision customers in New York, New Jersey, and Connecticut could miss the Oscars this year due to a retransmission dispute with Disney. I recognize that these are private negotiations, but its resolution is something that matters to the consumers who take hard earned money out of their wallets each month to pay their cable bills and have a right to expect not to be collateral damage in wars between executives. I ask you to urge the parties to stay at the negotiating table and continue transmitting ABC programming to Cablevision consumers. I simply do not believe consumers should lose access to a signal over their cable service as long as both parties are negotiating in good faith.

I take the rules that govern these negotiations seriously because they have repercussions for what Americans can view and how much they pay for it. I fear that this dispute is the most recent evidence that the retransmission consent regime has become outdated in the 18 years since it was crafted. Regardless of how this dispute turns out, it will not be the last time that we see a public fight between cable companies and broadcasters where the consumer is likely to be the loser and we need to fix the system.

Today, a broadcaster can pull its signal from cable companies serving millions of people if it does not get paid what it wants for that signal. I don't believe they should be able to do that unless the cable company is negotiating in bad faith, the broadcaster has submitted a claim of bad faith negotiation to the Federal Communications Commission (FCC) and the FCC has determined that claim to be true. At that point, then yes, the broadcaster should be free to pull their signal. But as long as there are good faith negotiations, all parties should stay at the table and signals should continue to be transmitted to consumers. That is not the law today, however. Currently, the broadcaster can pull his signal at his or her discretion.

In 1992, when the law was written, satellite and telephone delivery of television service were almost nonexistent. If you lived in New York, for example, you did not have the choice of FIOS or two satellite companies. You do today. Back then, cable's near monopoly status gave it immense power over broadcasters. As a result, the negotiating parameters were rightly set up to favor broadcasters.

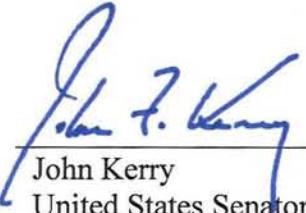
A lot has changed since then. But the rules are still the same. As a result, Disney can, as it has this week, threaten Cablevision with the loss of ABC right before the Oscars as a tool to

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negotiate higher cash payment for the programming. FOX did the same thing with Time Warner Cable at the beginning of the year with College Bowls programming. Disney knows that if they pull the signal, viewers will blame the cable company and switch to FIOS, RCN, DISH, or DIRECT TV after missing the Oscars. The result of these flawed incentives is consumer uncertainty, higher prices, and broadcasters using special events as leverage in negotiations.

The question for policymakers today is under what conditions the broadcaster should be able to pull programming from consumers, especially considering these important facts: first, broadcasters already benefit from free access to our airwaves; second, broadcasters carry live programming that can't be substituted like the Super Bowl, the Oscars, and the Olympics; and third, we are not living in 1992. I have suggested an answer here and I am open to alternatives. But this game of chicken being played again and again between cable companies and broadcasters with consumers in the crosshairs must come to an end.

Sincerely,



John Kerry  
United States Senator